

HEARING AIDS—FITTING AND DISPENSING—LICENSING

CHAPTER 366 ⁵⁶

S. B. No. 287

An Act relating to the licensing of persons to fit and dispense hearing aids; relating to the creation, organization, powers, duties, and procedures of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; defining the Fitting and Dispensing of Hearing Aids; providing certain prohibited acts; providing for examinations for applicants for license; providing for issuance of license without examination; providing for the issuance of temporary training permits; providing grounds for the refusal to license and the revocation and suspension of license; providing fees for examination, issuance of license and training permits; providing for renewal of license; providing duties of licensees; providing for penalties; prohibiting licensees to treat a person or to administer drugs; providing for the sale of hearing aids by persons licensed under this Act; providing persons excepted from the Act; providing licensees under this Act exempt from the provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended; providing for severability; and providing an effective date.

Be it enacted by the Legislature of the State of Texas:

Section 1. Definitions.

In this Act, unless the context requires a different definition:

(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this Act to person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

Sec. 2. Board of examiners.

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearings Aids is hereby created. The Board shall be composed of nine members with the following qualifications, to-wit:

(1) Six of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two

56. Vernon's Ann.Civ.St. art. 4566—1.01 to 4566—1.22.

of such six members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

(2) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company;

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

(d) The members of the initial Board, to be appointed by the Governor to take office on the effective date of this Act, shall be divided into three classes, to-wit: Class One, Class Two, and Class Three, and their terms of office shall be determined by lot at the first meeting of the Board. The three Class One members shall hold office for two years; and the three Class Two members shall hold office for four years; and the three Class Three members shall hold office for six years respectively, from the time of their appointment. Biennially thereafter, the Governor shall appoint three members of the Board to hold office for a term of six years.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

Sec. 3. Board organization and meetings.

Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than 30 days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the Board. Written notice of such regular meetings of the Board shall be given to the members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of such regular meeting. Special meetings of the Board shall be held upon the written request of a majority of the members or upon the call of the President. Written notice of such spe-

cial meetings of the Board shall be given to members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of the special meetings. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days.

Sec. 4. Powers and duties of the board.

(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties.

(b) The Board shall have the power to appoint committees from its own membership, the duties of which shall be to consider such matters, pertaining to the enforcement of this Act, as shall be referred to said committees, and they shall make recommendations to the Board in respect thereto.

(c) The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions of this Act.

(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.

(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case.

(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.

(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept.

Sec. 5. Records.

(a) The Board shall preserve an accurate record of all meetings and proceedings of the Board.

(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.

(c) The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.

(d) The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee.

Sec. 6. Examination: application.

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of 18 years, is of good moral character, is free of contagious or infectious disease, and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests in the following areas as they pertain to the fitting and dispensing of hearing aids, to-wit:

- (1) Basic physics of sound;
 - (2) The structure and function of hearing aids;
 - (3) Fitting of hearing aids;
 - (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
 - (5) Live voice and/or record voice speech audiometry;
 - (6) Masking when indicated;
 - (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
 - (8) Selection and adaption of hearing aids and testing of hearing aids;
- and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized nor shall there be more than one change or group of changes in any one calendar year. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. All applicants examined during a given calendar year shall be given the same examination. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

Sec. 7. License without examination.

Within 120 days after the effective date of this Act, and not thereafter, any person engaged in fitting and dispensing hearing aids on the effective date of this Act, shall be registered by the Board as passing the qualifications of this Act and shall receive from the Board a license to fit and dispense hearing aids in this state without taking the examination provided for in this Act upon presentation, in writing, by such person to the Secretary-Treasurer of the Board on forms to be furnished by the Board,

sworn evidence that such person has attained the age of 18 years of age, is of good moral character, is free of contagious or infectious diseases and has been engaged in fitting and dispensing hearing aids in the United States of America for a period of at least one year immediately prior to the effective date of this Act.

Sec. 8. Reciprocal arrangements.

(a) Upon proper application, the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids shall grant a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories having requirements equivalent to or higher than those in effect pursuant to this Act for fitting and dispensing hearing aids.

(b) Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the Board. Such applications shall be filed with the Secretary-Treasurer of the Board. The application shall be accompanied by a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas is true and correct.

(c) Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate or license was issued and that no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony.

Sec. 9. Temporary training permit.

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

Sec. 10. Refusal to license and revocation or suspension of license—grounds.

The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons:

- (1) The applicant or licensee is guilty of gross immorality.
- (2) The applicant or licensee is unfit or incompetent by reason of negligence.
- (3) The applicant or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing hearing aids or in his seeking of a license under this Act.
- (4) The applicant or licensee has been convicted of a felony or a misdemeanor which involved moral turpitude.
- (5) The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind.
- (6) The applicant or licensee has violated any of the provisions of this Act.
- (7) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.
- (8) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.
- (9) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.
- (10) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this Subsection (10) and the following Subsection (11) be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.
- (11) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.
- (12) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(13) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(14) The licensee defamed another licensee under this Act by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or any other false representation or falsely disparaging the products of such other licensee in any respect, or the business methods, selling prices, values, credit terms, policies, or services of such other licensee.

(15) The licensee displayed competitive products in his place of business, or in the advertising in such manner as to falsely disparage them.

(16) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aids models as being the correct, current model of such hearing aids.

(17) The licensee imitated or simulated the trademark, tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.

(18) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.

(19) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

(20) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(21) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(22) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(23) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

(24) The licensee had failed to actively engage in the fitting and dispensing of hearing aids for a period of three consecutive years.

Sec. 11. Procedure.

(a) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(b) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

(c) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

(d) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(e) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(f) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(g) A case reviewed under the provisions of this section proceeds in such district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of such district court will lie as other civil cases.

(h) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

Sec. 12. Fees and expenses.

(a) The Board shall charge a fee of \$10.00 for issuing a temporary training permit, which fee must accompany the application for a temporary training permit.

(b) The Board shall charge a fee of \$25.00 for examining an applicant for a license, which fee must accompany the application.

(c) The Board shall charge a fee of \$50.00 for issuing a license.

(1) Any person making application for a license without an examination as provided in Sections 7 and 8 must submit such fee with such application.

(2) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

(d) The Board shall charge a fee of \$5.00 for each duplicate license or duplicate temporary training permit.

(e) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the general fund.

(f) The compensation and travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act.

(g) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month ex-

cept in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(h) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(i) After the Act has been effective for a period of two years, the total appropriations to the Board shall never exceed the total amount received for all fees collected for the two-year period immediately prior to such appropriation.

Sec. 13. Renewal of license.

(a) On or before the first day of January of each year, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$50.00 for the renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

(b) When a licensee shall fail to pay his annual renewal fee by February 1st of each year, it shall be the duty of the Board to notify such licensee by certified mail at his last known address that said annual renewal fee is due and unpaid; if the annual renewal fee is not paid within 60 days from the said date of mailing such notice, the Board shall then cancel said license.

(c) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(d) After the Board shall have cancelled a license for nonpayment of the annual renewal fee, the Board may refuse to issue a new license until such fitter and dispenser of hearing aids has paid all previous unpaid annual fees.

(e) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

Sec. 14. Duty of a licensee.

(a) Every person engaged in the fitting and dispensing of hearing aids in this state shall display his license in a conspicuous place in his principal office and whenever required, exhibit such license to the Board or its authorized representatives.

(b) Every licensee shall deliver to each person supplied with a hearing aid, by the licensee or under his direction, a bill of sale which shall contain his signature, his printed name, the address of his principal office, the number of his license, a description of the make and model of the hearing aid furnished and the amount charged therefor, and whether the hearing aid is new, used or rebuilt.

(c) Such receipt as required in Subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section.

Sec. 15. Prohibited acts.

(a) It is unlawful for any person to:

(1) Buy, sell, or fraudulently obtain a license to fit and dispense hearing aids or aid or abet therein;

(2) Alter a license to fit and dispense hearing aids with the intent to defraud;

(3) Willfully make a false statement in an application to the Texas Board of Examiners of Fitters and Dispensers of Hearing Aids for a license, a temporary training permit or for the renewal of a license;

(4) Falsely impersonate any person duly licensed as a fitter and dispenser of hearing aids under the provisions of this Act.

(5) Offer or hold himself out as authorized to fit and dispense hearing aids, or use in connection with his name any designation tending to imply that he is authorized to engage in the fitting and dispensing of hearing aids, if not so licensed under the provisions of this Act; or

(6) Engage in the fitting and dispensing of hearing aids during the time his license shall be cancelled, suspended or revoked.

(b) It is unlawful for any person not a licensed fitter and dispenser of hearing aids or holder of a temporary training permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in Subsection (b) of Section 1 of this Act.

Sec. 16. Penalty.

Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both.

Sec. 17. Treatment of ear defects and administration of drugs.

Nothing contained in this Act shall be construed to permit persons licensed under this Act to treat the ear for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever unless the licensee is a duly qualified physician and surgeon and licensed to practice by the Texas State Board of Medical Examiners. Nothing in this Act shall be construed to amend or modify the laws regulating the practice of medicine as defined by Article 4510, Revised Civil Statutes of Texas.

Sec. 18. Employment of licensee.

(a) Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state from engaging in the practice of fitting and dispensing hearing aids at retail or selling or offering for sale hearing aids at

Ch. 366 61ST LEGISLATURE—REGULAR SESSION

retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products, instruments or devices.

(b) Any person licensed under this Act who is employed by a corporation, partnership, trust, association or other like organization to sell and/or fit hearing aids shall supply the Board with the name and address of such employer at the time such licensee applies for an annual renewal of his license.

Sec. 19. Exceptions.

Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning.

(2) Persons engaged in the practice of measuring human hearing as a part of a program conducted by a nonprofit organization, provided such organization or its employees does not sell hearing aids.

(3) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids.

Sec. 20. Exceptions from the Basic Science Law.

The provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended commonly referred to as the Basic Science Law do not apply to fitters and dispensers of hearing aids duly qualified and licensed under this Act who confine their activity to the fitting and dispensing of hearing aids.

Sec. 21. Severability.

If any portion of this Act or the application thereof to any person, case or circumstance is held invalid, such invalidity shall not affect any other provision or application which can be given effect without the invalid provision or application, and to this end this provision of this Act is declared to be severable.

Sec. 22. Effective date.

This Act shall become effective January 1, 1970.

Passed the Senate on May 6, 1969, by a viva voce vote; May 21, 1969, Senate concurred in House amendments by a viva voce vote; passed the House on May 21, 1969, with amendments, by a non-record vote.

Approved May 29, 1969.

Effective Jan. 1, 1970.